

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

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| THE KROGER CO., | : | Case No.: C-1-02-439 |
| | : | |
| Plaintiff, | : | Beckwith, J. |
| | : | Sherman, M.J. |
| | : | |
| v. | : | <u>THE KROGER CO’S MOTION TO FILE</u> |
| | : | <u>SURREPLY TO MALEASE’S REPLY IN</u> |
| | : | <u>SUPPORT OF ITS MOTION TO RELEASE</u> |
| MALEASE FOODS CORP., | : | <u>FUNDS</u> |
| | : | |
| Defendant. | : | |

Pursuant to the Federal Rules of Civil Procedure, Plaintiff The Kroger Co. (“Kroger”) moves this Court to permit a Surreply with respect to Malease Foods Corp.’s (“Malease’s”) Reply in Support of its Motion to Release Funds. The surreply is requested because Malease mischaracterizes both the cases and the nature of the dispute at hand in an effort to improperly seize monies that are currently in dispute and properly placed in escrow by this Court.

If this Motion is granted, then Kroger respectfully requests that the attached Surreply be considered properly filed as a separate pleading.

Respectfully submitted,

/s/ Douglas R. Dennis

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CERTIFICATE OF SERVICE

I hereby certify that on December 29, 2003, a copy of the foregoing was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system and copies will be mailed via U.S. mail to those parties who are not served via the Court's electronic filing system. Parties may access this filing through the Court's system.

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